

### **REMARKS**

This responds to the Advisory Action dated September 29, 2006 and the Final Office Action dated July 19, 2006. Claims 1, 9, 11, and 15 are amended. No claims are canceled or added. As a result, claims 1-17 remain pending in this patent application.

#### **§102 Rejection of the Claims**

Claims 1, 3, 8, 11, 13-15 and 17 were rejected under 35 U.S.C. § 102(e) for anticipation by Thompson (U.S. Publication No. 2004/0167587A1). As an initial note, Applicant reserves all rights to later swear behind Thompson or any other § 102(e) reference. Nonetheless, Applicant has amended claims 1, 11, and 15 to overcome this rejection.

Applicant cannot find in Thompson any disclosure of an external programmer for an implantable cardiac rhythm management device, the external programmer including a user interface display configured to display a first module listing a plurality of cardiac rhythm management system device families, and a plurality of second modules, each associated with one of the cardiac rhythm management system device families listed by the first module, wherein the second module provides a plurality of high-level parameters associated with each of the cardiac rhythm management device families listed by the first module, as similarly recited or incorporated in these claims.

Instead, FIG. 2 of Thompson merely shows a programmer 5 that is configured to wirelessly communicate with a plurality of separate medical devices 8A-8D—without providing any disclosure of how any display that might be included with programmer 5 would be configured to display such first and second modules as recited in the claims. The Final Office Action states:

Thompson discloses a first module comprising multi-mode programmer 5 and a plurality of second modules comprising medical devices 8A-8D. Programmer 5 clearly functions in an interface capacity and is capable of listing families of cardiac rhythm management system devices since the programmer can configure itself for communication with medical device 8 based on the telemetry signal 12 received from medical device 8. The programmer dynamically selects an appropriate communication mode see paragraph 0035. This is the equivalent of the interface including a first module listing a plurality of CRM system device families and a user can configure the programmer 5 to communicate with a CRM device by selecting the appropriate CRM device family. Medical devices 8A-8D

form a plurality of second modules, each associated with one of the cardiac rhythm management system device families listed by the first module. The different telemetry signals 12 may be modulated differently and different coding schemes may be associated with different signals 12 thereby providing a plurality of high-level parameters associated with each of the cardiac rhythm management device families listed by the first module.

(Final Office Action at 2-3.) Applicant respectfully disagrees.

First, Applicant respectfully submits that the medical devices 8A-8D shown in Thompson cannot in any way constitute *displayed* “second modules” that are displayed by a user interface device for a programmer for a cardiac rhythm management system, as presently similarly recited or incorporated in these amended claims. Instead, the medical devices 8A-8D are physically separate devices from a user interface—indeed they are the very medical devices to which the programmer 4 of Thompson provides a wireless programmer user interface.

Second, Applicant respectfully disagrees that selecting a communication mode is somehow equivalent to a user interface module actually displaying a listing of a plurality of cardiac rhythm management system device families—nothing in the cited portion of Thompson indicates that its communication modes are distinct as to different device families. Indeed, this would require Thompson to have a one-to-one correspondence between communication modes and device families, such that each device family necessarily uses a different communication mode that allows a device family to be distinguished from another device family on the basis of the communication mode. Applicant respectfully submits that there is no objective evidence of record that Thompson’s communication modes are capable of or are used for such a purpose.

In asserting such an equivalence, the Final Office Action appears to be inappropriately relying on a theory of inherency. Applicant respectfully submits that the Final Office Action has not established a *prima facie* case of inherency because, as recited in MPEP § 2112, “In relying upon the theory of inherency, the examiner must provide basis in fact and/or technical reasoning to reasonably support the determination that the allegedly inherent characteristic necessarily flows from the teachings of the applied prior art,” citing Ex parte Levy, 17 USPQ2d 1461, 1464 (Bd. Pat. App. & Inter. 1990) (emphasis in original). Nothing in Thompson or the reasoning provided in the Final Office Action explains why a displayed first module listing a plurality of cardiac rhythm management system device families necessarily flow from permitting different

communication modes—which certainly need not necessarily have a one-to-one-correspondence with different device families. Third, because the *physical* medical devices 8A-8D cannot possibly constitute a plurality of *displayed* second modules *displayed by* a user interface for a programmer for a cardiac rhythm management system device (as explained above), Applicant respectfully submits that the mere inclusion of high level parameters in such medical devices 8A-8D does not provide any basis for a displayed second module *displayed by* the user interface that provides a plurality of high-level parameters associated with each of the cardiac rhythm management system families listed by the first module.

In sum, Applicant respectfully submits that Thompson apparently fails to disclose all elements recited or incorporated in the present claims, therefore, no *prima facie* case of anticipation exists with respect to these claims. Accordingly, Applicant respectfully requests withdrawal of this basis of rejection of these claims.

#### §103 Rejection of the Claims

Claims 2, 4-7, 9, 10, 12 and 16 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Thompson (U.S. Publication No. 2004/0167587A1). As an initial note, Applicant reserves all rights to later swear behind Thompson or any other § 102(e) reference. Nonetheless, Applicant respectfully submits that the present claim amendments overcome this rejection, such that, because all elements recited or incorporated in these claims, as amended, are apparently not present in Thompson, no *prima facie* case of obviousness exists with respect to these claims for the reasons discussed above with respect to the § 102 rejection. Accordingly, Applicant respectfully requests withdrawal of this basis of rejection of these claims.

#### Request for Telephonic Interview

If the present Amendments and Remarks do not result in allowance of all claims, then Applicant respectfully requests a telephonic interview at the Examiner's convenience with Applicant's counsel, Suneel Arora, at 612-373-6951 to discuss the basis for rejection of any claims that are still rejected, as well as the Thompson U.S. Publication No. 2004/0167587A1 reference.

**CONCLUSION**

Applicant respectfully submits that the claims are in condition for allowance and notification to that effect is earnestly requested. The Examiner is invited to telephone Applicant's attorney (612) 373-6951 to facilitate prosecution of this application.

If necessary, please charge any additional fees or credit overpayment to Deposit Account No. 19-0743.

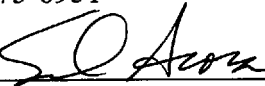
Respectfully submitted,

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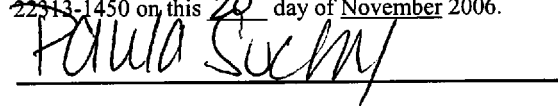
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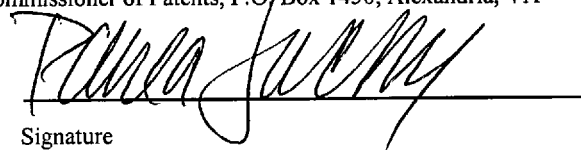
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Name



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